Petroliam Nasional Bhd v Nik Ramli bin Nik Hassan

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO W-02-269 OF 1996
GOPAL SRI RAM, NH CHAN AND AHMAD FAIRUZ JJCA
25 JANUARY 2000

Labour Law *— Employment — Dismissal — Constructive dismissal — Failure to honour obligations under scholarship agreement — Respondent given same position as before acquiring additional qualification — Ill-treatment by immediate superior — Plea for betterment of position ignored — Whether amount to constructive dismissal*

The respondent entered into a scholarship agreement with the appellant company which required the respondent to serve the appellant for six years, having regard to his qualification and service in the appellant company. Upon completion of his course, the respondent was given a position as geologist — the same position which he occupied when he first joined the appellant. The respondent alleged that he was ill-treated by his immediate superior and wrote several letters to the appellant — pleading for a betterment of his position. After waiting for about two years for an improvement of his position but to no avail, the respondent considered himself constructively dismissed and lodged a complaint with the Director General of Industrial Relations. His complaint was referred to the Industrial Court which dismissed his claim for unjustified dismissal. The respondent's application for orders of certiorari and mandamus were granted by the High Court. It was submitted that the learned judge was right in issuing certiorari because the Industrial Court did not conduct an analysis of the facts and that no reasonable tribunal, similarly circumstanced, would have arrived at the decision which the Industrial Court did.

Held, allowing the appeal and finding that the respondent was dismissed without just cause or excuse:

Having regard to the factual matrix, in particular, the treatment that the respondent received at the hands of the appellant's officers, there is little or no doubt that a reasonable tribunal, properly directing itself on the facts and law would have reached a conclusion that the respondent had been dismissed without just cause or excuse (see p 276D). The Industrial Court had taken a narrow and pedantic approach to the facts before it. This is a case which, according to the terms of the Industrial Relations Act 1967, has to be decided in accordance with good conscience and equity. The mere staccato repetition of the statutory formula in the award by the Industrial Court does not fulfil its function. A mere statement to that effect does not satisfy the requirement. It must in fact do so (see p 276B–C).

[Bahasa Malaysia summary

Responden telah memasuki satu perjanjian biasiswa dengan syarikat perayu yang menghendaki responden berkhidmat dengan perayu selama enam tahun, dengan mengambil kira kelulusan dan khidmat

beliau di dalam syarikat perayu. Setelah selesai kursus beliau, responden telah diberikan jawatan sebagai seorang ahli geologi — jawatan yang sama yang telah dijawat oleh beliau semasa beliau mula-mula bekerja dengan perayu. Responden mendakwa bahawa beliau telah dianiaya oleh ketua beliau dan telah menulis beberapa pucuk surat kepada perayu — memohon untuk memperbaiki kedudukan jawatan beliau. Setelah menunggu selama dua tahun untuk memperoleh kemajuan di dalam jawatan beliau tetapi tanpa sebarang perubahan, responden menganggap diri beliau dipecatkan secara konstruktif dan membuat aduan kepada Ketua Pengarah Perhubungan Perindustrian. Aduan beliau telah dirujukkan kepada Mahkamah Perusahaan yang telah menolak tuntutan beliau sebagai pemecatan yang tidak wajar. Permohonan responden untuk perintah certiorari dan mandamus telah diberikan oleh Mahkamah Tinggi. Adalah dihujahkan bahawa hakim yang arif adalah betul di dalam mengeluarkan certiorari tersebut kerana Mahkamah Perusahaan tidak menjalankan satu analisa fakta dan bahawa tiada tribunal yang munasabah, di dalam keadaan yang sama, akan tiba kepada satu keputusan sebagai mana Mahkamah Perusahaan.

Diputuskan, membenarkan rayuan dan mendapati bahawa responden telah dipecat tanpa sebab atau alasan yang adil:

Setelah membuat pertimbangan berdasarkan kenyataan matrix, terutamanya, layanan yang diterima oleh responden oleh pegawai-pegawai perayu, wujud sedikit atau tiada keraguan lagi bahawa satu tribunal yang munasabah, dengan arahan yang betul atas fakta dan undang-undang, akan mencapai satu kesimpulan bahawa responden telah dipecat tanpa sebab atau alasan yang adil (lihat ms 276D). Mahkamah Perusahaan telah megambil satu pendekatan yang sempit dan terlalu teliti terhadap fakta-fakta yang dihadapkan. Ini merupakan kes di mana, menurut terma-terma di dalam Akta Perhubungan Perusahaan 1967, perlu diputuskan menurut hati nurani yang baik dan ekuiti. Hanya dengan perulangan staccato formula statutori di dalam award oleh Mahkamah Perusahaan tidak akan memenuhi fungsinya. Suatu kenyataan semata-mata tidak akan memenuhi keperluan tersebut. Ia seharusnya dibuat sedemikian (lihat ms 276B–C).

[*Editorial Note*: The appellant has filed an application for leave to appeal to the Federal Court vide Federal Court Civil Application No 08–17–2000(W).]

Notes

For cases on dismissal generally, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 723–730.

Cases referred to

Hotel Malaya Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers & Anor [1982] 2 MLJ 237 (refd)

R Rama Chandran v The Industrial Court of Malaysia [1997] 1 MLJ 145 (refd) A

State of Madras, The v G Sundaram AIR 1965 SC 1103 (refd)

William Jacks & Co (M) Sdn Bhd v S Balasingam [1997] 3 AMR 2585 (refd)

B

Legislation referred to

Industrial Relations Act 1967 s 20(1)

Appeal from: Originating Motion No R2–25–18 of 1995 (High Court, Kuala Lumpur)

C

S Nantha Balan (*Shook Lin & Bok*) for the appellant.

LG Seah (*Lobo & Associates*) for the respondent.

Gopal Sri Ram JCA (delivering judgment of the court): This is an appeal against the order of the learned judge issuing certiorari to quash an award of the Industrial Court decided under s 20 of the Industrial Relations Act 1967. The basic facts of the case are not in dispute. D

The respondent was, at all material times, employed as a geologist by the appellant. He commenced working for the appellant on 16 December 1977. On 8 October 1983, the parties entered into a scholarship agreement under the terms of which the appellant sent the respondent to attend a course at the University of Oxford in England. The respondent successfully completed that course and obtained a doctorate in geology. The scholarship agreement required the respondent to serve the appellant for six years 'in such post and at such salary and upon such terms and conditions as may be determined by Petronas ('the appellant') having regard to his previous service in Petronas and the qualification he has obtained through attending the course' (see cl 1(ix) of the scholarship agreement). E F

On his return from the United Kingdom, the respondent was given a position as geologist with the appellant. This was the same position that he had occupied in 1978 when he first joined the appellant. The respondent was dissatisfied with this state of affairs. In addition, he was, to put it mildly, ill-treated by his immediate superior, Dr Ramlee Karim. The latter took steps to ignore the respondent and did not permit him to participate in the work opportunities available in the Laboratory Services Department in which the respondent was located. As a result of the unsatisfactory position that obtained, the respondent wrote several letters, some of which received no reply from the appellant. We do not propose to reproduce all the correspondence in this judgment. Suffice to say that the respondent's letters evince a tone of sad frustration and a plea for a betterment of his position. That his plea fell on deaf ears is apparent from the total lack of response from the appellant. Instead, the appellant chose to treat the respondent's complaints as being confrontational. In the words of its counsel, Mr Nantha Balan, 'the respondent was dictating terms' to the appellant. It is unfortunate that the appellant formed such a view. On our part, we must say in fairness to the respondent, that the tone of his letters does not admit of such a description. G H I

A After waiting for about two years for an improvement of his position, the respondent came to the conclusion that the appellant was not minded to honour its obligations made with him under the scholarship agreement. Accordingly, on 19 December 1988, the respondent wrote to En Mohd Zohari (the Director of the Petroleum Research Institute) stating that he had no alternative in the circumstances but to consider himself dismissed B with effect from the day following the date of the letter. Having treated himself as having been dismissed, the respondent lodged a complaint with the Director General of Industrial Relations under s 20(1) of the Industrial Relations Act 1967. Following the conciliation procedure prescribed by that section, his complaint was eventually referred to the Industrial Court. After a hearing that lasted over several days, the Industrial Court found no merit C in the complaints of the respondent. It accordingly dismissed his claim for unjustified dismissal. In doing so, the learned president of the Industrial Court, after setting out the history of the matter, summed up his views in the following paragraph of his award:

> Having heard the oral evidence and seen the documentary exhibits produced D by both parties before this court, I am of the finding that the claimant has not on the balance of probability proved to the court that he was cold storaged or was in a nothing-to-do position. Neither was he demoted. In fact, oral as well as documentary evidence are overwhelmingly against the contention of the claimant. As such, I am of the view that the company is not guilty of a breach which goes to the root of the service contract or it has evinced an intention no E longer to be bound by it.

The respondent, being unhappy with this decision, moved the High Court at Kuala Lumpur for orders of certiorari and mandamus. These were granted by the learned judge. He held that the Industrial Court had committed an error of law in arriving at its conclusion. This finding has been attacked before us by the learned counsel for the appellant. He has F submitted that learned judge exceeded the parameters of certiorari jurisdiction by usurping the function of an appellate court. Mr Nantha Balan, who has argued this appeal with much ability, drew our attention to a number of authorities which circumscribe the judicial review jurisdiction of the High Court. He has submitted, quite rightly, that once the Industrial G Court made an evaluation rightly or wrongly and had arrived at a finding of fact, that finding was immunised from judicial review (see *The State of Madras v G Sundaram* AIR 1965 SC 1103; *William Jacks & Co (M) Sdn Bhd v S Balasingam* [1997] 3 AMR 2585).

For the respondent, Ms LG Seah has pointed out that the Industrial Court failed to perform its function in accordance with law. In support of H her argument, she cited the following passage of Raja Azlan Shah CJ (Malaya) in *Hotel Malaya Sdn Bhd v National Union of Hotel, Bar and Restaurant Workers & Anor* [1982] 2 MLJ 237 at p 240 where he said:

> [The Industrial Court] exercises a quasi-judicial function. It gives a full reasoned judgment in the nature of an award (s 30). Its function comprise an I investigation of the facts, analysis of the facts, findings of facts, and lastly, the application of the law to those findings.

It is Ms Seah's argument that the learned judge was right in issuing certiorari because the Industrial Court did not conduct an analysis of the

facts. She says that if it had, it would not have come to the conclusion that it did. For good measure, she also adds that no reasonable tribunal, similarly circumstanced, would have arrived at the decision which the Industrial Court did.

Now, having read the record and having considered the submissions of both counsel carefully, we agree with the submission advanced on behalf of the respondent. This is a case where it is clear that the Industrial Court took a narrow and pedantic approach to the facts before it. This is not a case of breach of contract at common law. This is a case which, according to the terms of the Industrial Relations Act 1967, has to be decided in accordance with good conscience and equity.

Mr Nantha Balan's response is that the Industrial Court had in fact acted in accordance with equity and good conscience. He drew our attention to the final paragraph in the award. But with respect to counsel, the mere staccato repetition of the statutory formula by the Industrial Court does not fulfil its function. A mere statement to that effect does not satisfy the requirement. It must in fact do so.

Having regard to the factual matrix, in particular, the treatment that the respondent received at the hands of the appellant's officers, there is little or no doubt in our minds that a reasonable tribunal, properly directing itself on the facts and law would have reached a conclusion that the respondent had been dismissed without just cause or excuse. That is indeed the conclusion of the learned judge. We are fully in agreement with him. Having read his judgment, we are unable to discover any misdirection either in law or in his appreciation of the facts. We are therefore of the view that this appeal should be dismissed. The appellant is to pay the costs of this appeal. The deposit is to be paid out to the respondent to account of his taxed costs.

Following the decision of the Federal Court in *R Rama Chandran v The Industrial Court of Malaysia* [1997] 1 MLJ 145, we find this to be a suitable case, in view of the findings we have arrived at to vary the order of the learned judge to the following extent:

(1) certiorari is to issue to quash the award of the Industrial Court;

(2) there shall be entered a finding that the respondent was dismissed without just cause or excuse;

(3) the order of mandamus is set aside;

(4) the case shall be remitted to the Industrial Court to assess the quantum of compensation only.

(5) the remedy of reinstatement is refused.

Appeal dismissed.

Reported by Loo Lai Mee